

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

HOMES FOR OUR TROOPS, INC.,

Plaintiff,

vs.

ELEMENTS OF CONSTRUCTION,
INC.,

Defendant.

CV 18–121–M–DWM

ORDER

Plaintiff Homes For Our Troops (“Homes”) seeks to compel Defendant Elements of Construction, Inc.’s (“Elements”) responses to four interrogatories and five requests for production. (Doc. 22); Fed. R. Civ. P. 37(a)(3)(A). While Elements noted its objection to the motion, (*see* Doc. 22 at 2), it did not file a responsive briefing. Element’s failure to file a response brief is deemed an admission that the motion is well-taken, *see* L.R. 7.1(d)(1)(B)(ii).

A party may move the Court “for an order compelling an answer, designation, production, or inspection . . . if . . . a party fails to answer an

interrogatory submitted under Rule 33[] or a party fails to produce documents or fails to respond that inspection will be permitted . . . as requested under Rule 34.” Fed. R. Civ. P. 37(a)(3)(B)(iii), (iv). The scope of discovery is broad and includes “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1). “Information . . . need not be admissible in evidence to be discoverable.” *Id.*

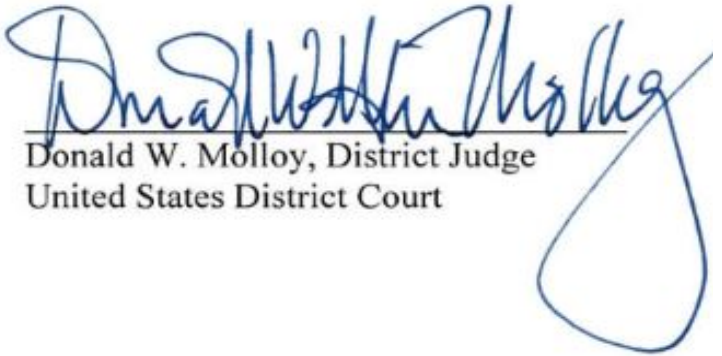
Here, Homes seeks information related to Element’s financial records, the underlying lawsuit, and the parties’ contract. While Elements objected to a number of the requests on the grounds of attorney-client privilege and/or work-product, it did not provide a privilege log or disclose non-privileged material. As argued by Homes, because Elements has placed its financial condition at issue and the lawsuit relates directly to monies paid in the underlying state case against Elements, the requested information is discoverable. Because Elements has not responded to the motion, there are no grounds to conclude its objections are warranted or information may be properly withheld.

Accordingly, IT IS ORDERED that Homes’ motion to compel (Doc. 22) is GRANTED. Elements must fully respond to Homes’ discovery requests on or before February 15, 2019.

IT IS FURTHER ORDERED that Homes is awarded attorneys’ fees and reasonable expenses related to the motion. *See* Fed. R. Civ. P. 37(a)(5). Within

ten (10) days of the date of this Order, Homes shall file a detailed accounting of the fees and costs requested for approval.

DATED this 12th day of February, 2019.



Donald W. Molloy, District Judge
United States District Court